

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA**

**APPLICATION FOR CERTIFICATION FOR THE
EASTSHORE ENERGY CENTER IN HAYWARD
BY TIERRA ENERGY**

DOCKET No. 06-AFC-6
(AFC ACCEPTED 11/8/06)

**ORDER DENYING INTERVENORS' REQUESTS TO SET ASIDE DATES FOR
PREHEARING CONFERENCE & EVIDENTIARY HEARING**

I. Background

The Preliminary Staff Assessment (PSA) was published August 17, 2007. The Final Staff Assessment (FSA) was expected to be filed at the end of October 2007, pending receipt of information on the aviation issue raised in the PSA.

On October 17, 2007, we issued a Notice of Prehearing Conference (PHC) and Evidentiary Hearing (EH) dates, scheduling the PHC on November 26, 2007, and the EH on December 17-18, 2007 (herein "Notice"). The Notice was broadly distributed to the Hayward community to provide ample time for the media and local residents to learn about the hearing dates. The FSA was subsequently filed on November 9, 2007. The FSA is substantially the same as the PSA, except for the updates on aviation concerns and additional analysis of the potential cumulative impacts of the Russell City and Eastshore projects. On November 13, 2007, Intervenor Paul Haavik filed a Petition to set aside the dates scheduled for the PHC and EH. On November 14, 2007, Intervenor Alameda County filed a letter also requesting postponement of the PHC and EH.

In his Petition, Mr. Haavik argues that the PHC and EH should be respectively postponed for 30 days because the late filing of the FSA hinders his ability to prepare for the PHC. Alameda County, having intervened on November 9, 2007, requests a similar time extension to prepare for the PHC.

On November 15, 2007, Applicant filed an Opposition to Intervenor Haavik's Petition, asserting that Applicant should not be penalized by Staff's delays in completing the certification process within the 12-month statutory timeline.

II. Energy Commission Process

Section 1718.5(a) of the Energy Commission's regulations (Cal. Code of Regs., tit. 20, § 1718.5(a)) provides that the Committee shall hold one or more PHCs with all parties and interested agencies to establish procedures, identify issues,

and set schedules for adjudicatory hearings. (See also, section 1208, which requires the Notice to be served at least 10 days before the PHC. In this case, the Notice was served 40 days before the PHC.) Section 1747 states that the FSA shall be filed at least 14 days before the EH. Notably, the instant FSA was filed 38 days before the EH.

The PHC, currently scheduled on November 26, 2007, is consistent with the regulations and does not preclude any party from offering additional statements of facts or raising issues or presenting testimony during the EH. (See, section 1718.5(c).) The Intervenor's concern about preparation time is not persuasive since they will have the opportunity to present testimony and documentary evidence at the EH. As indicated in the Notice, the purpose of the PHC is to discuss issues, identify witnesses, produce exhibits, and plan the presentation of evidence at the EH. To reiterate, only the parties may present evidence and cross-examine witnesses. Witnesses must have expertise in the scope of their testimony.

Since this proceeding has been ongoing for more than twelve months, time extensions to review case materials will not be granted to new Intervenor's such as Alameda County. (See, Notice, p. 4.) Both Mr. Haavik and Alameda County representatives have participated in the process since the Application for Certification was filed. Energy Commission staff has consulted with Mr. Haavik and several Alameda County staff over the course of this review.

Mr. Haavik notes that a printed version of the FSA and access to the October 9, 2007, letter from the FAA were not available for public review. All documents filed with the Energy Commission's docket unit are posted on the Energy Commission's webpage and are, therefore, accessible to Mr. Haavik. His assertions to the contrary are not consistent with his usual diligence in reviewing project-related information.

III. ORDER

It is hereby Ordered that Intervenor's Haavik and Alameda County's requests for delay in the schedule for the PHC and EH be DENIED. Neither party has shown an undue burden nor prejudice as a result of the FSA's November 9, 2007, filing date, nor are the parties precluded from presenting witnesses or other evidence at the EH.

Dated: November 15, 2007 at Sacramento, California.

Original Signed By:

JEFFREY D. BYRON
Commissioner and Presiding Member
Eastshore AFC Committee

Original Signed By:

JOHN L. GEESMAN
Commissioner and Associate Member
Eastshore AFC Committee